

THE HONORABLE THOMAS S. ZILLY

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

ROB RINDE f/k/a ROBERT LARRY LEROY  
PITSOR, JR.,

Plaintiff,

v.

THE CORPORATION OF THE PRESIDENT  
OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS, a Utah corporation  
sole, aka the "MORMON CHURCH" THE  
CHURCH OF JESUS CHRIST OF LATTER-  
DAY SAINTS, an unincorporated association,

Defendant.

NO. C06-0556 TSZ

MEMORDANDUM OF THE  
CORPORATION OF THE  
PRESIDENT OF THE CHURCH OF  
JESUS CHRIST OF LATTER-DAY  
SAINTS IN OPPOSITION TO  
PLAINTIFF'S MOTION TO  
AMEND COMPLAINT AND TO  
REMAND

**I. INTRODUCTION**

Corporation of the President of the Church of Jesus Christ of Latter-Day Saints ("COP")  
hereby opposes plaintiff's motion to amend the complaint to add The Church of Jesus Christ of  
Latter-Day Saints ("the Church" or "LDS Church") as a defendant in this matter.

Plaintiff's attempt to add the unincorporated Church as a new party is procedurally and  
substantively defective. Procedurally, plaintiff has invoked the wrong rule. Plaintiff relies on  
the liberal amendment standard in Rule 15(a), but that rule does not apply to the post-removal

MEMORDANDUM OF THE CORPORATION OF THE  
PRESIDENT OF THE CHURCH OF JESUS CHRIST OF  
LATTER-DAY SAINTS IN OPPOSITION TO PLAINTIFF'S  
MOTION TO AMEND COMPLAINT AND TO REMAND - 1  
No. C06-0556 TSZ

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1 joinder of a party that would destroy diversity jurisdiction. Instead, 28 U.S.C. § 1447(e)  
2  
3 provides the substantive legal standard. Under that standard, this Court has broad discretion to  
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5 reject the joinder of a party that serves no purpose other than to defeat diversity jurisdiction.  
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7 Plaintiff seeks to join the entire unincorporated Church – a spiritual association consisting  
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9 of millions of individual Church members – because the citizenship of each member of an  
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11 unincorporated association counts for purposes of determining diversity jurisdiction. Since the  
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13 Church has members in all 50 States, if the Church were joined to this litigation then remand  
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15 would likely be proper. However, joinder of the Church is not proper and should be rejected  
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17 under the discretionary analysis in § 1447(e).  
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19 Most major religious organizations have a dual existence: a corporate existence, through  
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21 which they hold assets, employ individuals and carry out the business of the organization, and a  
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23 spiritual one, which does none of the above. COP is a corporation sole organized under Utah  
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25 law. COP can sue and be sued, enter contracts, hire and pay employees and otherwise carry out  
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27 church business. In contrast, the Church itself is an association of believers that possesses no  
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29 assets.<sup>1</sup> An unincorporated church is not a proper party where the church has adopted a  
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31 corporate form – such as COP – to deal with its worldly affairs. This is especially true where the  
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33 church itself has no assets and the corporate entity is fully capable of satisfying a judgment.  
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35 Further, plaintiff's effort to join the Church is entirely theoretical – it cannot practically  
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37 be accomplished. Although Washington allows service on certain agents of an association  
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39 “doing business” in Washington, it has no such provisions regarding service upon a religious  
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42 <sup>1</sup> In the past, the Church has often been characterized or characterized itself as an unincorporated association. As a  
43 matter of law, that is probably not accurate. As indicated below, where a legal corporate entity exists to administer a  
44 denomination's worldly affairs, the authorities suggest that for legal purposes no other entity than the corporate  
45 entity should be recognized.

1 association that is not doing business. Hence, the only way to serve the Church and bring it  
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3 before the Court's jurisdiction would be to serve its members individually, who number more  
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5 than 245,000 in Washington State alone and millions throughout the nation.  
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7 Finally, Plaintiff's motion is made solely for the purpose of defeating diversity  
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9 jurisdiction and constitutes brazen forum shopping. Plaintiff's counsel have a similar case  
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11 pending before this Court which, as here, names as a defendant COP "a/k/a the 'Mormon  
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13 Church,'" Fleming v. The Corporation of the President of the Church of Jesus Christ of Latter-  
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15 Day Saints (No. CO4-2338 RSM). Fleming was filed in state court, and defendant COP  
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17 removed the case to this Court. Since removal, it has been litigated here for eighteen months and  
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19 it is set for trial on October 2 of this year. Plaintiff's counsel did not move in Fleming to add the  
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21 Church as a defendant or move to remand. Plaintiff's counsel thus understand that the Church is  
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23 not a proper defendant or, at minimum, not a necessary defendant. It is thus apparent that  
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25 plaintiff's counsel cherry-pick cases in which they seek to add the Church as a defendant, in  
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27 those cases where they see it in their interest to attempt to destroy diversity. In this case,  
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29 plaintiff's counsel apparently prefer to try the case in front of Superior Court Judge Downing, to  
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31 whom the case was assigned. Under § 1447(e), that is not a proper basis for joining the Church  
32  
33 and destroying diversity jurisdiction.  
34

## 35 II. FACTS

### 36 A. Most Religious Organizations, Including the LDS and Catholic Churches, Operate 37 Through a Form of Corporate Organization.

38 Before addressing the specifics of the corporate existence of the LDS Church, it is  
39  
40 appropriate to describe why religious organizations adopt a corporate form and the unique  
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42 corporate form that is often used. Most religious organizations do not carry out church business  
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1 through unincorporated associations. This is not surprising, given the disadvantages of this form  
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 3 of organization: "lack of limits on personal liability for the members and directors; difficulties in  
 4  
 5 the ownership, receipt and succession of property, particularly real property; [and] complications  
 6  
 7 in entering into legal transactions such as contracts and the initiation of lawsuits. . . ."

8  
 9 Gerstenblith, Associational Structures of Religious Organizations, 1995 B.Y.U. L. Rev. 439, 444  
 10  
 11 (1995).  
 12

13 For these reasons, most organizations which are of any size or complexity, which  
 14 own property, or which desire to gain other advantages from a more formal  
 15 corporate status choose to incorporate under one of the applicable state  
 16 incorporation statutes. Even those organizations which operate at the regional or  
 17 national level and thus across state lines must incorporate in one state, and the law  
 18 of that state will generally determine any questions involving legal status.  
 19

20 Id.  
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22 Utah permits a religious organization to incorporate as a "corporation sole," thus  
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 24 permitting the incorporation of one or more high offices within the particular church. Utah Code  
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 26 Ann. § 16-7-1 et seq. Washington also permits this form of organization and, for example, the  
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 28 Catholic Bishop of Spokane and the Corporation of the Catholic Archbishop of Seattle are  
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 30 organized as corporations sole.<sup>2</sup>  
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32 [A] corporation sole is the incorporation of the bishop or other presiding officer of  
 33 the church for the purposes of administering and managing the affairs, property  
 34 and temporalities of the church. The principal purpose of a corporation sole is to  
 35 insure the continuation of ownership of a religious organization's property. At the  
 36 death of the individual holding the office, church property passes to the successor  
 37 to the office for the benefit of the religious group, rather than passing to the  
 38 officeholder's heirs.  
 39

40 Gerstenblith, supra, at 455. Utah's corporation sole statute grants corporate protection to the  
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43 <sup>2</sup> According to the web site of the Washington Secretary of State, <http://www.secstate.wa.gov/corps/>, the Catholic  
 44 Bishop of Spokane is an active corporation sole organized in 1915 and the Corporation of the Catholic Archbishop  
 45 of Seattle is an active corporation sole organized in 1861.

1 incorporating religious organization, and provides that the entity shall have power: (1) to  
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 3 "acquire," "possess" and "dispose" of real property; (2) "to borrow money"; (3) "to contract and  
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 5 be contracted with"; (4) "to sue and be sued"; (5) "to plead and be impleaded in all courts of  
 6  
 7 justice"; and (6) to have a common seal. Utah Code Ann. § 16-7-6.

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 9 **B. Defendant COP Exists to Conduct Temporal Affairs on Behalf of the Church.**

10 For over 75 years, COP has been incorporated as a corporation sole under Utah law.  
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 12 Affidavit of Paul D. Rytting, ¶ 3. It has its headquarters in Salt Lake City, Utah. Id. It has  
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 14 employees, owns significant assets and carries out church business. Id. COP funds all church-  
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 16 sponsored activities and outings such as those at issue here.  
 17

18  
 19 **C. The Spiritual Association Plaintiff Seeks to Add – the Church Itself – Is Concerned**  
 20 **Solely with Spiritual Matters, Holds No Property, and Conducts No Business.**

21 As distinguished from COP, The Church of Jesus Christ of Latter-day Saints exists solely  
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 23 as an ecclesiastical/spiritual organization, with more than 27,000 congregations and more than  
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 25 12.6 million members worldwide. Rytting Affidavit ¶ 5. Under Church doctrine, the Church  
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 27 functions as the Kingdom of God on the earth. From time to time, the president or other "general  
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 29 authorities" of the Church provide spiritual and doctrinal guidance to local church leaders and  
 30  
 31 the general membership. Id. ¶ 7. Local leaders of the Church also perform religious functions  
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 33 similar to those performed in other religious organizations, including blessings, baptisms,  
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 35 confirmation, ordinations, and the calling of members to serve in volunteer ecclesiastical  
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 37 positions. Id. The Church has no corporate identity and no articles of association, bylaws, or  
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 39 rules governing legal existence. Instead, the Church is organized and governed by scripture, by  
 40  
 41 modern revelation, and by the ecclesiastical doctrines and beliefs of the Church. Id. ¶ 6.  
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As a purely ecclesiastical and spiritual association, the Church itself holds no assets or property. Id. ¶ 4. It does not do business in any state, nor is it registered to do so. Id. The Church has no employees and it has no money from which to pay salaries, employment taxes, or benefits. Id. Thus, if a judgment were rendered against the Church, it would be futile because the Church has absolutely no assets or property from which such a judgment could be satisfied. Id.

### III. ARGUMENT

#### A. Under 28 U.S.C. § 1447(e), this Court Has Broad Discretion to Deny Joinder of a Party that Would Improperly Destroy Diversity Jurisdiction.

Now that this action has been removed to federal court, whether the Church should be joined as a party is governed by 28 U.S.C. § 1447(e), not Rule 15(a) or Rule 19. See Newcombe v. Adolf Coors Co., 157 F.3d 686, 691 (9<sup>th</sup> Cir. 1998); Mayes v. Rapoport, 198 F.3d 457, 462 n.11 (4<sup>th</sup> Cir. 1999) (court has discretion to deny or permit joinder even when Rule 15(a) or Rule 19 permit amendment or joinder). Under 28 U.S.C. § 1447(e), “[o]nce removal has occurred, the district court has two options in dealing with an attempt to join a non-diverse party.” Newcombe, 157 F.3d at 691. Specifically, § 1447(e) provides: “If after removal the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction, the court may deny joinder, or permit joinder and remand the action to the State court.” 28 U.S.C. § 1447(e).

As the Ninth Circuit has indicated, this Court has considerable discretion in determining whether to permit joinder of a “diversity destroying” defendant after removal: “The language of § 1447(e) is couched in permissive terms and it clearly gives the district court the discretion to deny joinder.” Newcombe, 157 F.3d at 691; Mayes, 198 F.3d at 462 (“Under Section 1447(e), the actual decision on whether or not to permit joinder of a defendant under these circumstances



1 is committed to the sound discretion of the district court; thus, this decision is not controlled by a  
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 3 Rule 19 analysis.”) (citing 14C Charles A. Wright, Arthur R. Miller, & Edward H. Cooper,  
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 5 Federal Practice and Procedure § 3739, at 445 (3d ed. 1998) (“Section 1447(e) gives the court  
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 7 more flexibility than a strict Rule 19 analysis”)).

8  
 9 The court in Mayes explained that “[i]n exercising its discretion under Section 1447(e),  
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 11 the district court [is] entitled to consider all relevant factors, including: the extent to which the  
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 13 purpose of the amendment is to defeat federal jurisdiction, whether the plaintiff has been dilatory  
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 15 in asking for amendment, whether the plaintiff will be significantly injured if amendment is not  
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 17 allowed, and any other factors bearing on the equities.” Mayes, 198 F.3d at 462 (internal  
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 19 quotation marks and citations omitted; emphasis added). Moore’s Federal Practice states that the  
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 21 district court should consider: (1) “[t]he plaintiff’s motive for seeking joinder of a nondiverse  
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 23 defendant;” (2) “[w]hether a delay in seeking joinder is unexplained or unjustifiable;” (3)  
 24  
 25 “[w]hether the statute of limitations would bar an action against the new defendant in state court  
 26  
 27 if joinder is denied;” (4) “[t]he strength of the claim;” (5) “[w]hether the plaintiff will be  
 28  
 29 significantly injured if the amendment is disallowed;” and (6) “[a]ny other factor bearing on the  
 30  
 31 equities.” 15 Moore’s Federal Practice 3D § 107.41[2][d][B], p. 107-220-21 (2006). In short,  
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 33 “[t]he district court, with input from the parties, should balance the equities in deciding whether  
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 35 the plaintiff should be permitted to join a nondiverse defendant.” Mayes, 198 F.3d at 463.

36  
 37 **B. This Court Should Deny Joinder of the Church Because (1) Joinder Is Sought Solely**  
 38 **or Principally to Defeat Diversity Jurisdiction and Amounts to Forum Shopping; (2)**  
 39 **Having Chosen a Corporate Form of Organization, the Church Cannot Be Sued as**  
 40 **an Unincorporated Association; (3) the Church Cannot Be Served; and (4) Denial of**  
 41 **Joinder Causes No Injury to Plaintiff.**

42  
 43 Improper Motive. The reason joinder is sought is an important factor in the § 1447(e)  
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 45 analysis. Here, there is no doubt that the amendment to join the Church is sought solely or

1 principally to defeat diversity jurisdiction. The facts are clear: COP has assets; the Church has  
2 none. This is obviously why plaintiff's counsel has not bothered to sue the Church as a separate  
3 defendant in the Fleming case currently pending in this Court, and why they did not sue the  
4 Church in the state court action of Doe et al. v. COP, NO. 02-2-04105-1KNT (King County)  
5 (now on appeal to the Washington Court of Appeals, No. 52452-6-1). The Church's lack of  
6 assets make the proposed amendment pointless and in bad faith. Bad faith is a factor that  
7 supports denial of a motion to amend under Rule 15, Johnson v. Buckley, 356 F.3d 1067, 1077  
8 (9th Cir. 2004), and thus further supports denial here. The LDS Church is represented in this  
9 action by its corporate entity, COP, which is fully able to satisfy any judgment. Plaintiff's intent  
10 to defeat diversity jurisdiction by adding the Church constitutes an improper motive.  
11

12 The Weakness of Plaintiff's Claim Against the Church. "Futility alone can justify the  
13 denial of a motion to amend." Johnson, 356 F.3d at 1077. Having chosen a corporate form of  
14 organization to conduct its worldly affairs, plaintiff cannot merely disregard that form and sue  
15 the Church as an unincorporated spiritual association. Plaintiff has already implicitly recognized  
16 the existence of the Church's corporate structure by suing COP in this action. As noted,  
17 Plaintiff's counsel also named COP as the defendant in the Fleming matter currently pending  
18 before this Court and in the Doe matter now pending before the Washington Court of Appeals  
19 without separately naming the Church. The existence and adequacy of COP as a proper  
20 defendant in this action cannot seriously be disputed.  
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22 Given the existence of COP, plaintiff's attempt to sue the Church as an unincorporated  
23 association is futile and thus the amendment should be denied. As a purely spiritual association  
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with no worldly affairs, the Church cannot be sued and thus is not a proper party.<sup>3</sup> Once a religious entity chooses to incorporate utilizing a valid and recognized form of legal incorporation, one can bring suit only against the corporate form:

[W]henever a religious society incorporates, it assumes a dual existence; two distinct entities come into being -- one, the church, which is conceived and endures wholly free from the civil law, and the other, the corporation created through the state prescribed method. Each remains separate although closely allied. The components of the ecclesiastical interrelationship between the parent church and the subordinate body cannot be permitted to serve as a bridge capable of reaching the non-secular parent in a civil proceeding.

Folwell v. Bernard, 477 So. 2d 1060, 1063 (Fla. App. 1985) (emphasis added) (citation omitted).

Numerous courts concur with Folwell and expressly acknowledge and respect the existence of two separate yet related entities: the spiritual or ecclesiastical entity that cannot be sued and over which courts have no jurisdiction, and the temporal or corporate entity which is subject to judicial control in accordance with statutory and constitutional restrictions.<sup>4</sup>

<sup>3</sup> Plaintiff may argue COP's position is inconsistent with COP's position in a case from Oregon., Scott v. Corporation of the Presiding Bishop of the Church of Latter Day Saints, et. al. (D. Ore. Civ. No. 98-366). In that case, the complaint named the Church, not COP, as a corporation sole, which the Church denied. The Church then filed a motion "for determination of diversity jurisdiction," advising the court that it had no desire to return to state court but if the Court viewed the Church as an unincorporated association, and that entity was a defendant, then the traditional rule would defeat diversity. The Church defendants did not concede that the unincorporated Church was a proper defendant with COP -- the issue was not addressed at all -- and thus there is no inconsistency between COP's position here and in Scott. Without the court being advised of the cases cited below, Scott was remanded to state court.

<sup>4</sup> See, e.g., Trinity Presbyterian Church of Montgomery v. Tankersley, 374 So.2d 861 (Ala. 1979) (whenever there is an incorporated church, there exist two entities, a spiritual church and a secular legal corporation; courts have no power over the former, but may decide questions pertaining to the latter); Sorenson v. Logan, 32 Ill.App.2d 294, 177 N.E.2d 713 (1961) (same); Koch v. Estes, 146 Misc. 249, 262 N.Y.S. 23 (1933) ("A religious corporation has a double aspect, the one spiritual, the other temporal. With regard to the former, courts have no concern"); Trotter v. Debnam, 24 N.C.App. 356, 210 S.E.2d 551 (1975) ("religious societies have double aspects, the one spiritual, with which legal courts have no concern, and the other temporal, which is subject to judicial control"); Willis v. Davis, 323 S.W.2d 847 (Ky. Ct. App. 1959) ("such a corporation is civil in nature and is an entity distinguishable from an ecclesiastical society or association, the one having jurisdiction over the temporal or secular and the other over ecclesiastical or spiritual affairs"); Master v. Second Parish of Portland, 36 F. Supp. 918 (D. Me. 1940) (same); Islamic Center v. Islamic Science Foundation, Inc., 628 N.Y.S.2d 179 (App. Div. 1995) (same); Williams v. Jones, 61 So.2d 101 (Ala. 1952) ("whenever there is an incorporated church, there are two entities, the one the church as such, not owing its ecclesiastical or spiritual existence to the civil law, and the legal corporation, each separate

Where, as here, a religious denomination's corporate entity holds the denomination's assets and is fully capable of serving as the defendant in a lawsuit – in other words, where the religious entity is focused entirely on religious matters – courts should and must honor the corporate structure and deny attempts to drag the spiritual association into personal injury lawsuits. Plaintiff's attempt to sue the Church itself is futile and thus not a proper basis for joinder.

The Church Cannot Be Served. If this Court were to permit the amendment/joinder and remand to state court, the Church would be a fictitious defendant – a defendant in name but not in fact. This result would follow not just because the Church has no assets, but also because it could never be served. Washington law provides for service of process as follows:

(10) If the suit be against a foreign corporation or nonresident joint stock company, partnership or association doing business within this state, to any agent, cashier or secretary thereof. . . .

(15) In all other cases, to the defendant personally, or by leaving a copy of the summons at the house of his or her usual abode with some person of suitable age and discretion then resident therein.

RCW 4.28.080 (emphasis added).

The reference in subsection 10 to an association "doing business in the state" is the only provision in the statute that mentions associations. There is no provision for serving a representative or agent of an unincorporated association that does not conduct business in the state, whether it be a social club, a recreational organization or a religious organization. Hence, to serve the Church as an unincorporated association, plaintiff would need to serve all members

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though closely allied"); Lilly v. Tobbein, 15 S.W. 618 (Mo. 1891) (same); Evans v. Criss, 39 Misc.2d 314, 240 N.Y.S.2d 517 (1963)(same); Crissman v. Board of Trustees, 1990 WL 31796 (Ohio Ct. App. March 21, 1990) (same); Disinukes v. State, 58 So. 195 (Ala. 1912) (incorporated church consists of two distinct elements); Metropolitan Baptist Church v. Braxton, 137 N.Y.S.2d 294 (Sup. Ct. 1954) (same); *see also* Serbian Eastern Orthodox Diocese v. Milivojevich, 426 U.S. 696 (1976); Smith v. Church of God, 326 F. Supp. 6 (D. Md. 1971).

1 of the organization. Id. Plainly, this is never going to happen with 245,000 members in  
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3 Washington alone and millions more throughout the United States. Thus, no relief could ever be  
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5 obtained against the Church itself (even if it had assets) because neither this Court nor the State  
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7 court will ever obtain personal jurisdiction over it. For this further reason, joinder of the Church  
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9 is not appropriate.

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11 No Injury to Plaintiff. Lastly, denial of the motion works no prejudice whatsoever to  
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13 Plaintiff. As repeatedly noted, COP is the proper defendant in this action and is fully able to  
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15 satisfy any judgment plaintiff may obtain. Apart from forum shopping, there is simply no reason  
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17 to bring the unincorporated Church into this action.

#### 18 19 IV. CONCLUSION

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21 For the reasons stated above, COP requests that this Court deny the motion to add the  
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23 Church as a defendant. Given that the motion to remand rises or falls with the motion to amend,  
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25 COP thus requests that the motion to remand also be denied.

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27 DATED this 22<sup>nd</sup> day of May, 2006.  
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**CERTIFICATE OF SERVICE**

I hereby certify that on May 22, 2006, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

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